K 1953

File No. Est. I/53

Legal Department.

C. **BRANCH**

Subject:—

Establishment —

correspondence relating to

Gazetted officers.

P=47
E

File No. Est. I/53

Gen. 194 e.

226-C

Shri.P.M.Lad, I.C.S..

Declaration of--as a cadre officer.

GOVERNMENT OF BOMBAY.
Political and Services Department.
Resolution No.I.A.S. 1753
Bombay Castle, 16th June 1953.

RESOLUTION OF GOVERNMENT.

The Government of Bombay is pleased to declare under, Rule 4(ii) of the Indian Civil Administrative Cadre Rules, 1930 that Shri P.M.Lad, I.C.S., who is permanately allotted to the Judiciary should be deemed to be a "cadre officer" for the purpose of those rules during the period for which he acts as Chief Secretary to the Government of Bombay, Political and Services Department and Development Commissioner, vice Shri M.D. Bhansali, granted leave.

By order and in the name of the Governor of Bombay,

Sd/-
(N.S.Pardasani)
Deputy Secretary to the Government of Bombay,
Political and Services Department

To.

The Secretary to the Governor,
The Secretary to the Chief Minister,
The Prothonotary and Senior Master, High Court, Bombay, (by letter),
The Registrar, High Court, Appellate Side, Bombay (by letter)
The Accountant General, Bombay,
The Home Department,
The Legal Department,
All other Departments of the Secretariat (except the Separate Department),
Shri P.M. Lad, I.C.S.

M.R.D.
30/7/56
C.A

From:-
THE A.G.'S OFFICE.
BOMBAY.

To:-
The Secretary to Govt.,
Legal Deptt.,BOMBAY.

G I IC?/3049 Station:- Bombay 14th Sept,1949 9/83

Sub:- The post of Secretary to Govt.,L.D. ahad R.L.A.-:Pay of the post etc..

Sir,

I am to state that thep post of Legal Remembrancer and Secretary Legal Deptt. was one of the superior posts included in the Bombay and Sind combined cadre (vide schedule to the Reserved Posts(Indian Civil Service)Rules 1938. This post and the other posts of Distt. and Sessions Judges have not been included in the I.C.A.Cadre of Bombay (vide schedule (3)to the Indian Administrative and Police Services Rules 1950 read with the Govt. of Bombay P.&.'.D. letter No.6099/ 46-D dt.2/4/51). From para(3) of G.L.H.'. No.7436/S-II-20994-A dt.31-12-51 (extract of para (3)of the Govt. letter enclosed for ready reference), it will be seen, that the number of sanctioned posts of Distt. and Session Judges is the same as the number allotted in the former Bombay Sind.I.C.S. Judicial Cadre. The post of R.L.A. has been mentioned therein but the post of Secretary to Govt. Legal Deptt. has not been mentioned. It is presumed that the orders in the G.L. of 31/12/51 referred to above cover the post of Secretary to Govt. L.D. and R.L.A. This may please be confirmed.

2. If the presumption in para 1 above be incorrect, I would request Govt. to point out the orders under which the post of Secretary tp Govt.L.D. and R.L.A. (included in the former I.C.S. cadre) has now been converted into a state(provincial) post.

3. The pay of the post (when not held by members of the I.C.S. Officer) may also be stated through the Finance Deptt.

A very early reply is requested.

Yours faithfully,
Sd/-
Asstt. Accountant Genl.

M.R.D.
30/9/86
C.4

Copy of para(3) of the Govt. of Bombay H.D. Letter No.7436/S-II-20994-A dt. 31-12-51.

The number of Sanctioned posts of Dist. and sessions Judges in this state is the same as the number allotted to this state in the former of Bombay-sind I.C.S. judicial cadre i-e-19(including one post in the selection grade, one post of Remembrancer of Legal affairs, and one of post of Dy. Secretary Legal Deptt) plus 6 temporary posts of List. Judges last continued under the orders in G.R. H.D.No.9989/Sdt.9.3.51.

Govt. has decided that the scale of pay of these posts(when not held by members of theI.C.S. or holders of listed posts) should be the senior time scale of the D.A.S. from Rs.1,000/-

The nature of the rules relating to recruitment and conditions of service and other details of the new state judicial service are under consideration and orders in the matter will be issued in due course.

Sd/-
Superindent Basore Deptt.

M.R.D.
30-7-56
C.4

Legal Department.

Submitted.

Please see A.G.'s letter at p. 1 ante.

2. This reference, it appears, has arisen on account of H.D. Letter No. 7436/8-II-20994-a, dated the 31st December 1951 which refers only to the post of RXL.A. and not of the Secy.L.D. also (vide extracts of para 3 exp.3ante)

3. It is not understood how the H.D.has mentioned only the R.L.A.'s post in its letter quoted above. The post of the R.L.A. and the Secy,L.D. is a combined post vide Schedule to the Reserved Posts(I.C.S.) Rules, 1938, also see para 16 of the Manual of Appointments and Allowances Pt.II. In view of the above it appears that the presumption made by the A.G., Bombay that the orders issued in H.D. letter referred to above also cover the post of Secy. to Govt, L.D. and RXL. appear to be correct. The points raised by the A.G. in paras 2 and 3 of his letter under reference do not arise.

4. Before the reply is issued to the A.G. papers may be shown u.o. to H.F.,P.&S.D.and the F.D.

Sd/-
29/1

The point has arisen as the H.D. letter (extract xxx at page 3 ante) quotes only R.L.C.'s post vide portion underlined and not as "Legal Remembrancer and Secy, Legal Deptt. as printed in the Schedule to the Reserved posts(I.C.S.) Rules) FTD letter therefore appears to need modification.

Sd/-
29-9-53

P.A.C. Put up the Rules and the P.&.S.D. letter dt.24.4.51 referred to at 'A'

Sd/-31-9

Submitted.

The rules in question are put up vide slip'C' in the B.G.G. Pt. IV C. 1950 below. The P.&.S.D. letter is not on our record and presumably not addressed to L.I.

Sd/-
1/10

S.S. Sd/-
1-10-53

P.T.O.

As-(Adm)

Please see extract para 3 of the H.D. letter No.7436/S-II-20994-A, dt,31-12-51 and para 1 of letter from the Asstt. Accountant General, Bombay, No.G.I.I.C.S. /3049 dt.14-9-53. For the reasons stated in para 1 of his letter, the A.A.G. presumes that the orders in the H.D. letter dt.31-12-51 also cover the post of the Secretary to Government, Legal Deptt., and R.L.A.,though the post of Secy., L.D. has not been specifically mentioned along with the post of R.L.A. Since the question raised is as a result of the orders issued by the HRDR , that that Deptt. may see in the first instance for remarks with reference to para 1 of the A.A.G.' letter dt.14-9-1953.

Sd/-

1/10

U.R. to H.D. No.19934/ dt. 16th October, 1953.

M.R.D.
30-7-54
C.4

H.D.(A)

Submitted with reference to the L.D. notes on prepages.

2. The post of H.L.A. only was mentioned in para 3 of this Deptt.letter No7436/S-II-20994-A Ad, dated the 31-12-1951 apparently on the basis of the P.&.S.D. 's note dated the 30-4-51. Since the post of H.L.A. & Secy.L.D. is shown as a combined post in the Schedule to the Reserved posts(I.C.S.) Rules 1938, the post of Secy.L.D. may perhaps be deemed to include in the number of sanctioned posts of Dist. and Sessions Judge communicated to the A.G./. The presumption of the A.G./- may, therefore, be confirmed.

3. Incidentally, the H.C. is not agreeable to include the posts in the L.D., Charity commissioner's office and Industrial Court in the cadres of the Judicial Service although it has agreed to loan the judicial officers from time to time required for appointment to the posts under L.D. etc. In these circumstances, it seems that the post of H.L.A. and Secy,L.D. will have tobe excluded from the cadre of Distt. and Sessions Judge. However, till the new Judicial Service is formed there appears to be no objections to confirming the presumption of the A.G., referred to in para 2 above.

4. The P.&.S.D. may see u.p.Sd/x

Sd/-
19-10-53

Secy. Sd/-
21-10-53

U.R. to P.&.S.D. dt 21-10-53.

M.R.D.
30-7-56
C.4

No.22851/C
Legal Department,
Bombay Castle(Bombay No.1)14th November, 1953.

To.

The Accountant General,
Bombay.

Subject:- The post of Secretary to Government, L.D.and E.L.A.-pay of the post etc.

Sir,

With reference to your letter No.G-I-ICIS/3049, dated the 14th September 1953, on the above, I am directed to inform you that the presumption made by you in para 1 of your letter is confirmed. The points raised by you in paras 2 and 3 of your letter do not therefore arise.

Yours faithfully,

Sd/-

for Secretary to Government.

M.R.D.
30/7/56
C.4

D.O.No.G- I-ICIS/2363

Office of the
Accountant General, Bombay,
Dated the 1 August 1953.

My Dear Dahejia,

Kindly refer to Legal Department Resolution No.14742/E dated 10-7-1953 forwarded to us under Finance Department endorsement No.893/33-22733-VIII dated 15-7-53 allowing Shri M.R.Meher, I.C.S.(Rtd) pay at the rate of Rs,2,850/- p.m. minus pension he is getting at present, while holding the post of Additional Secretary to Government, Legal Department. Re-employment of Shri Meher with the Government of Bombay is governed by the terms of his contract printed as an accompaniment to the Revenue Department Resolution No. 437/49 dated 8-2-49. Clause 4 of the contract fixed his remuneration as equal to the difference between the pay he would have drawn in the senior time-scale of the I.C.S. from time to time had he continued to be a member of the I.C.S. and the pension he will draw for his past service as a member of that service. Clause 5 of the Contract further indicates that Shri Meher will not be entitled to any additional remuneration for doing any other work which may be assigned to him from time to time by Government. Accordingly Shri Meher would not be entitled to higher pay(by way of special pay or otherwise) if he is appointed to a higher post or to a post carrying a special pay or to hold a dual charge.

2. It is noticed, however, that on the present occasion as well as on certain occasions in the past Shri Meher was granted either special pay or higher consolidated pay as shown in the statement attached. I would, therefore, request that the intention of Government with to regard to the grant of higher pay when he holds a post above the time scale of the I.C.S.(I.A.S.) may kindly be elucidated.

3. Shri Meher showed me a copy of D.O.letter No.437/49-E dated 27-4-49 from Shri V.N. Sardesai, addressed to him in which it has been stated that the agreement will not preclude Government from giving him special pay if Government so desire as and when necessary. A copy of this D.O

not been received in this office and may kindly be forwarded through the Finance Department.

4. The case of Shri B.P. Delal, I.C.S.(Retd) who has been re-employed on contract and has been granted special pay while holding the post of Deputy Secretary, Political and Services Department and Chief Electoral Officer, Bombay and later the post of Additional Deputy Secretary to Government, Legal Department (vide Government Memorandum Political and Services Department No.7788/46-H dated 10-12-51 and Government Resolution Legal Department No.6804 dated 17-4-52) is also similar.

5. Pending receipt of yourm reply the pay and special pay granted to the above officers is being allowed to be drawn provisionally.

6. It is also necessary to bring to your notice the fact that though the post of Additional Secretary to Government, Legal Department has been sanctioned as a permanent post under Legal Department Resolution No.6355 dated 4-4-51 read with Government Corrigendum Legal Department No.14049 dated 1-9-51 the pay of the post has not yet been fixed. The spy allowed to Shri J.R. Dhurandhar Viz., Rs.3.000/p.m. (minus pension) in Government Resolution Legal Department No.6595 dated 14-7-48 was personal to him. It is necessary to fix the pay of the post finally having the regard to its duties and responsibilities so that the pay may not change when there is a change in the incumbancy of the post. Necessary orders fixing the pay of the post may kindly be issued now.

Yours Sincerely,

Sd/-V.N.Adavi.

Shri V.T. Dehejia, I.C.S.,
Secretary to the Government of Bombay,
Finance Department.
Bombay.

M.R.D.
31.7.[illegible]
C.[illegible]

Finance Department.VIIIE.

Submitted with reference to the foregoing office note.

2. All the relevant papers have since been obtained from the Departments, except those underlying G.R.;L?D No.[illegible]dated 17.4.1952.) The L.D. file containg the above papers is misplaced in this Deptt.) Even a copy of that G.R. is not available to put up(F.D. copy is not traceable and L.D. has no spare copies of the G.R.) Since the case of Shri.P.Palat is similar to that of Shri Kaber and since all the relevant papers in respect of the latter, are available it does not seem necessary to have the proceedings under lying the L.D.C.B. under reference. The points raised in the A.G.'s D.O. No.O.I.I.C.S./2363dt.1.8.1953. are now scrutinised below:-

3. Paras 1 and 2 of the A.G's D.O.:

Please see the the orders issued in R.D.No.837/40 dt.5.2.1940. One of the conditions of reemployment of Shri Kaber, is that he should be paid by way of remuneration for his service a sum, equal to the difference between, the pay he would have drawn from time to time in the senior time scale of pay of the the I.C.S. had he continued to be a member of the I.C.S.and the pension he would draw for his past service as a member of the I.C.S. vide

clause(4) of the Agreement. The rigourous application of this condition will not enable Shri Meher to draw pay in a post under this Govt. at a rate higher than, what would normally have been admissible to him in the senior time-scale of the I.C.S. minus his pension. Clause, 5 of the agreement, seem to deprive Shri M. of drawing additional remuneration for additional duties, assisgned to him by Govt.

Under G.R., L.D. No.14742/C dt.18.7.1953, Shri Meher had been appointed as Additional Secy. to Govt, Legal Deptt., on a pay of 2550 p.m. minus the pension. Strictly under the terms of his reemployment his pay should have been fixed at Rs.2250 p.m. minus pension, since that would have been his pay in the senor time-scale of the I.C.S. had be continued to be a member of the I.C.S. Please see in this connection, the proceedings underlying the G.R., L.D. No.14742/C dated 18.7.1953, at pages 39-42 of the L.D. file No Est 1 Addl. Secy/53 below. The pay of Rs.2550, seems to have been allowed to Shri Meher, on the ground, that the same, was allowed to him on previous occasions, in his capacity, as Chief Electoral Officer and Addl.Secy. P.&.S.D., and then as Secy.L.S.G. and P.H.D. The basis for allowing Shri M higher pay than that admissible under the terms of his contract, is that Govt. has held, that the agreement does not preclude it (i.e. Govt. from giving him specail pay, if it so desires, as and when necessary. In this connection, attention, is invited to Shri V.N.Sardesai's D.O.No.437/49-E dt.27.4.1949 and the proceedings underlying it, at pages 65-77 of the

R.D. file No.437/39 below. Clause 4 of the Agreement has been inserted in order to safeguard the interests of Govt. in as much as Shri Mohan should not claim appointment to higher posts outside the senior time-scale of the I.C.S. as a matter of right by virtue of his original rank in the I.C.S. Gradation List. It is however open to Govt. to sanction him higher pay as and when necessary. If a copy of Shri Sardesai's D.O. No.437/48-S dt.27.4.49 were addressed to the A.G.'s [illegible] perhaps he would not have raised the points now raised by him.

4. Para 3 of the A.G.'s D.O.

The papers underlying Shri Sardesai's D.O.dt. 27.4.1949 were seen by Shri Venkatappiah, in Finance Deptt. vide his note dt.22.3.1949,at page 70 of the R.D. file below There is therefore is therefore no objection to forward a copy of that D.O. to the A.G. The R.D. may be requested to forwarded the same to the A.G. through this Deptt.

5. Para 4 of the A.G.'s D.O.

The remarks offered in para 3 above, apply to this para also.

6. Para 6 of the A.G.'s D.O.

The post of Addl. Secy.L.D. was created in G.R., G.R.,L.D., 6505 dt.14.7.1948 and was made permanent with effect from 1.1.1950.under G.R., L.D. No.5365 dt.4.4.1951. The question of attaching a pay-scale for the post, however, does not seem to have been considered so far. Please see in this connection, Secy's note(copy) of June 1953, at pages 41-42 of L.D. file.

P.T.O.

No.EST I.Addl. Secy/53 below: secy is of the opinion that for future the post should be in the grade of Jt. Secy. when ay other officer holds it. The pay of a Jt. Secy., if a member of the I.C.S. is appointed to hold it, is Rs.2500. What pay, if a member of the I.A.S. is appointed to hold it, should be fixed, is required to be considred now. This Govt. has proposed that if an I.A.S.Officer is appointed to post of a Secy, he should be given pay of Rs.2250p.m. In view of this it will be reasonable, to fix the pay of an I.A.S. Officer appointed to the post, of Jt.Secy at Rs. 2000 p.m. The P.&.S.D.may be requestedx to see on this point and offer its remarks. That Deptt. may be requested to return the papers to this Deptt. through the L.D. and R.D.

Sd/-
22/9/53
23

D.S.(S) Sd/-
24-9

U.R.to the P.&.S.D./L.D. /R.D. dt. 25-9-53.

Political and Services Department
(Jr Branch).

These papers have been referred to this Department with reference to para 6 of the F.D. note. The point for consideration is that should be the pay to be attached to the post of Addl. Secy. to Govt., L.D. While holding the post Shri Narendhar is being paid a pay of Rs.3000/p.m. minus pension and Shri Meher was allowed in that post a pay of Rs2550/- p.m. minus pension.

It may be pointed out with reference to 'X' of the F.D. note that unlike the I.C.S. I.A.S. is purely an executive service and does not include a Judicial Branch. The question of appointing an I.A.S. officer to the post of Addl.Secy.L.D. will not therefore arise. What presumably F.D. says is that the post of Addl. Secy, may be converted into that of Jt.Secy, after the retirement of Shri Narendhar and that an officer appointed to that post must be given pay admissible to an IAS. Joint Secy. It may be stated in this connection that though we had proposed a pay of Rs.2250 to an I.A.S. officer appointed as Secy. and of Rs.2000/- to such an officer appointed as Jt. Secy. the Government of India are not likely to agree to this proposal since it appears from their letter in respect of the

the case of Shri Mohite who was appointed as Joint Secy. and Addl. Dev. Commr. in P.&.S.D. that they propose to adopt the principle of alloing I.A.S. officers appointed as Secys. and Joint Secretaries special pay in addition to grade pay instead of consolidated pay. The question regarding the pay to be allowed to I.A.S. Secretaries and Joint Secretaries is therefore still undecided.

In the circumstances, since it appears that the furture status of the post of Add.Secy.L.D. is still uncertain and the pay of I.A.S. officers in the posts of Secretaries and Joint Secretaries is yet to be decided, it will be expendient if the question of fixing the pay to be attached to the post is deferred. Since for the time being Shri Dhurandhar will contiue to hold the post and his pay in the post has already been fixed(as personal to him) there is no urgency to fix the permanent pay of the post. The position may be explained to the A.G.

It may incidentally be stated with reference to para 3 of the F.D. note that the pay of Shri Meher in the post of Secy, to Govt, L.S.G.&P.H.D. was fixed (at Rs.2550 minus pension) in consultation with the Government of India and he was allowed the same pay while holding the posts of Addl. Secy and SecyL.D. A copy of the contract executed by Shri Meher had been forwarded tothe Government of India.

The papers may be passed on to L.D.

Sd/-
28.1053

28.10.53

U.S.]
80/-
28.10.53

C.S.]
80/-
28.10

U.R. to L.D. 28.10.53.]

H.R.D.
30/7/56
C.4

L.D.R.L.No.2643

31-10-53.

Submitted with reference to F.D. note dated 24-9-53 P.&S.D. note dated 29.10.53.

In view of 'A' of P.&S.D. note dt. 29.10.53, no action is at present necessary in L.D. The papers may be ~~maby~~ may be seen and passed on to the R.D.

Sd/- N.N.(aik)
9.11.53.

Supdt. Id/- D.R(Pradhan)
9.11.53.

S.A.S.

Please see para.6 of the F.D. office note regarding fixation of pay for the post of Addl. Secy. in L.D. For the reasons stated at 'A' in the P.&S.D. note, the question may be deferred so long as Shri Dhurendhar continues as Addl. Secy. The papers may be"seen and passed on to the R.D."

Id/-K.P.B(hangara)
9.11

Secy. Additional Sec. may please see.

Id/-P.M.L(ad),
9.11

Id/-L.R.D(hurandhar),
9.11

M.R.D. U.R. to R.D. No.22793/C Dt. 13.11.53.
30/7/56
C.4

Legal Department.

27946
6-10-53.

Submitted.

Please see D.O. letter No.F14(1)-E.O./51, dated the 22nd December 1952 from the Establishment Officer, Government of India, Ministry of Home Affairs. They have raised the following two points for further consideration and comment:-

(1) The apparent confusion as to the particular post under the Bombay Government of which Shri Murdeshwar has hereto held a lien.

(2) The procedure adopted by the Bombay Government in carrying on direct correspondence with the officer officer concerned in the matter instead of with the Central Government.

As regards(1)the Govt. of India invites attention to G.L.,L.D. No.3390 dt. 24-2-1951 by which Shri Murdeshwar was informed that his lien on thepost of the A.S. to Govt., Legal Deptt. is retrospectively terminated with effect from 1-5-1944 under rule 20-A(b) of the B.C.S. Rs- and states that they have no information as to whether the post of A.S. to Govt., Legal Deptt. is one which is filled on a tenure basis for a limited term or terms or whether it is a post substantive appointment to which givens the officer a permanent lien thereon until he is appointed permanently to another post carrying at least equivalent statues and emoluments to which his permanent lien can be transferred. The Govt. of India states that the reference to rule 20-A(b) of the B.C.S. Rs. by the Bombay Govt. suggests that the post is of latter category and that the lien of Shri Murdeshwar cannot be terminated except on his written request. They say that no such request having been received, the action taken by the Bombay Govt. in terminating his lien appears to be unsustainable.

P.T.O.

The Govt of India states that the posts of Deputy Secretaries posts and it is fixed at four years. A Deputy Secretary in the Law Ministry is however eligible for reappointment for any number of further periods of four years subject to the consent of the lending Govt. and the superannuation. Shri Murdeshwar's substantive appointment to the permanent post of Deputy Secretary in the Law Ministry at the Centre does not give him a permanent lien on that post as his own incumbency of that post is subject to the application of the tenure rules, and the proposal of this Govt. to terminate his lien on the post under it would deprive him of his service right, in the event of his reversion at the end of the present tenure.

As regards(2)the Govt. of India states that as the services of Shri Murdeshwar were obtained by it in consultation with the Govt. of Bombay, the question whether or not circumstances exist which would justify the termination of his lien on a post under the lending Govt. can only be determined by the two Govts. concerned and not by the officer himself and states that the manner in which this Govt. has corresponded with Shri Murdeshwar is contrary to the proper and accepted procedure.

The Govt. of India requests that the whole case may be examined again, pending decision, the decision contained in our letter dt-24-2-1951 may be kept in abeyance.

The post of the Asstt. Secretary to Government, Legal Department is not a tenure post. The members of the B.C.S. (judicial Branch) were generally brought as P.A. to R.L.A. first and then subsequetly promoted to Asstt. Secretary's post whenever a vacancy occurred. Accordingly M/S. Phadkar and Palekar were brought in L.D. first as P.A. to R.L.A. and subsequently promoted to the post of Asstt. Secretary. whenever there was a vacancy and

according to seniority their turn came to be appointed as Asstt. Judge, they reverted to the judicial Branch. Only Shri Katarki continued to be in L.D. though he was brought over from the judicial Branch. It cannot be said that the post of Asstt. Secretary is a post which gives the officer a permanent lien thereon until he is appointed permanently to another post carrying at least equivalent status and emoluments to which his permanent lien can be transferred.

As Shri Murdeshwar was away from L.D. for nearly six years and the question of termination of his lien on the post of the Asstt. Secretary, L.D. was not to be decided from his point of view, but from the point of view of several other officers who expected to be confirmed in the vacancy caused by his deputation, it was found unfair to all concerned to continue his lien in L.D. for any longer period. Shri M. is a permanent member of the Bombay State Judicial Service and was on deputation in L.D. and since he had been away from L.D. for a long period it was though fair to terminate his lien. Accordingly his lien on the post of the Asstt. Secy. to Govt., Legal Deptt. was terminated with effect from 1-5-1944 under rule 20-A(b) of the B.C.S.Ra. on obtaining his consent in writing. Shri Murdeshwar held two suspended liens one on the post of C.J. and the other on the post of A.S., L.D. it was therefore imperative to terminate Shri M.'s lien from the post of A.S., L.D. As Shri M. still holds a suspended lien on the post of Civil Judge, the termination of his lien on the post of A.S.L.D. does not deprive him of his service right in the event of his reversion to the judicial Branch under this Govt. at the end of the present tenure of the post of the Deputy Secretary to the the Government of India in the Ministry of Law.

P.T.O.

...s juniors are already officiating as such and the scale of the Assistant Judge is Rs.700-50-1000 which is higher than the scale of the Asstt. Secretary.

As regards(2)the lien of Shri M. on the post of A.S. L.D. was terminated on his written consent and it was for Shri Nardeshwar to consult the Govt. of India before giving his consent.

Sd/-
13-10-53

Supdt- Please see next page

Sd/-
19-10-53

S.A.S.

M.R.D.
30-7-56
C.4

Submitted.

Pl. see G.of I. letter at slip M and H.D. note at pages 5 to 10 ante. H.D. states(vide"A" of para 3 of its note) that the question involved is one of revival of Shri M's lien on the post of A.S.,L.D. 2. In this connection it may be stated that the whole position was clearly explained to P.& S.D. in Secy. L.D.'s note dated the 8th March 1951. It may be reiterated that Shri Murdeshwar's lien was terminated in strict compliance with rule 20A(b) of the B.C.S. Rs. after obtaining his written consent and in consultation with the P.&.S.D. Though the rule does not prescribe that the borrowing Government should be consulted, still when Shri M. wrote to Secretary, Legal Department to terminate his lien on the post of Asst. Secretary, Legal Department there was every justification for this Department to presume that he did so in consultation with and after ascetaining the views of G.of I. about the post in which he was confirmed. It was, therefore, that a copy of the letter addressed to Shri M. was also sent to the Government of India for information. At that time it was stated that Shri M. would also hold his suspended lien on the post of C.J. (Junior Division) and active lien on the post of Dy. Secy. in the Law Ministry. If as pointed out by the Govt. of India Shri M's incumbency of the post of Dy. Secy. in the Law Ministry is subject to the tenure rules and is likely to terminate in May 1954, Shri M. will have the advantage of the suspended lien on the post of the Civil Judge (Junior Division)- 2. It will not be out of place to point out that an officer of judicial service drafted to L.D. generally holds his appointment on temporary basis and leaves the Department, when he becomes eligible

...ment as Asst. Judge. This has happend in case of all Civil judges drafted to L.D. so far with the exception of Shri K.T. Katarki.

3. The termination of Shri M's lien from 1-5-1944 was notified in Feb.1951 and communicated to the Govt. of India(Vide L.D. letter No.3390,dated the 24th February 1951). If Govt, of India had any difficulty, they should have communicated to Bombay Government immediately to remedy the action already taken. It is rather surprising that the Govt. of India should raise this point at this late stage. The situation at present is that there is no similar post(i.e. of Asst. Secy., L.D.) vacant or is likely to become vacant in which Shri M. can be accommodated by giving a suspended lien. In view of the position explained above,L.D. cannot revive the lien of Shri M. in the post of Asst.Secy., Legal Department.

Sd/-
19-10-53

S.A.S. Attention is invited to Secy(Shri Dharandhari's) note dt 8-3-1951 (which states the positionfully) and to D.O. letter No.6/1. Appts dt.22-3-1951. addressed to Shri Bapat by the Chief Secy. In the said D.O. letter Shri Bapat was informed that "So far as the question of the termination of this office's lien onthe post of Asst. Secy. in the Legal Deptt. is concerned, action has already been taken and his lien on that post has been terminated after getting his written consent for the same. The necessary notification in the matter has also been published in the B.G.G.". It may also be pointed out that a copy of the letter addressed to Shri Mardesh No, 3390 dt.24-2-51 was also forwarded to the Govt.of India, Ministry of Law. When Shri Mardeshwar addressed a letter to Secretary, L.D. and another to Shri Chaudhari, for terminating his lien on the post A.S., L.D. it was presumed that he did so with the consent and knowledge the Govt. of India.There is no post of A.S. vacant in which Shr Mardeshwar can be accommodated, not can his lien be revived. As the D.O. letter to Shri Bapat was addressed by the C.S.,P.&S.D. may however see this.

Sd/-
20/10
D.S.(L).

Secy.

The circumstances which lad to this termination of Shri Mardeshwar lien on the post of A.S. in L.D. have been fully explained in the above notes. In fact the Govt. of India was immediately informed the notification terminating Shri Mardeshwar lien was issued. This was on 24-2- 1951. It is surprising that the Govt. of India woke up to the reality after more than an year and half had elapsed. Shri Mardeshwar lien was terminated with is consent as regard by the Rules. and I do not think there was anything irregular in the procedure followed. In any case it would be too late now to reconsider the matter.

Sd/-
21-6

Additional Secretary may please despose of this case as he - quite familar wit the previous Developments.

Sd/-
22-10

Additional Secy.

A note and a Draft rely should bbe prepared for P.&S. Deptt.Explaining theposition as pointed out in the above note and these two Draft reply should go to H.D.

Sd/-
22-10

A self contained note and draft reply are put up.

Sd/-
29-10

D.S.(L).

. With reference to the query raised by the D.S.(L) that a Sube Judge has no claim to the post of A.S., attention is invited to para 4 of the letter to the Govt. of India, H.D. (Public),whrein it is clearly stated that a sub-Judge issuing his tenure of appointment as as Asst.Secretary will bre regarded as being on deputation the draft reply is amended, making this position clear, and is for approval

(Addl. Secy).

Sd/-18-11 D.S.(Leg.)

This O.M. should also be amended accordingly.

Sd/-15-11

M.R.D.
1-8-56-
C.4

Legal Department.

Shri Kurdeshwar had lien on the post of Assistant Secretary, Legal Department, as well as on the post of Civil Judge(Junior Division). His lien on the post of Assistant Secretary,L.D. was suspended under B.C.S.R. 19(b) by P.&.S.D. (Legal) Notification No. 9661,dated the 2nd January 1947 from 1-5-1944, the date of his deputation to the Government of India. The question of terminating his lien on the tenure post of Asstt.nt Secretary, Legal Department was therefore taken up, as nearly six years had elapsed since Shri Kurdeshwar had left the Department and also because it affected the prospects of others in this Department- The P.&.S.D., which was consulted in the matter, advised that it was imperative to terminate the lien of shir Kurdeshwar from the post of Assistant Secretary,L.D. and that it should be done after consulting him. A letter(No.13786 dated 29th September 1950) was accordingly addressed to him informing him that it was proposed to terminate his lien on the post of Assistant Secretary, Legal Department, under Rules 20A(b)of the B.C.S. Rules, and Requesting him him to communicate his consent thereto. As no reply was received, on 22nd November 1950, he was reminded to send his reply. He was informed that as he was appointed permanent Deputy Secretary in the Ministry of Law(Notification of Government of India, Ministry of Law, No.F.224/50 G.S. dated 24-10-50) there was hardly any objection to communicate his consent to the termination of his lien on the post of Assistant Secretary, Legal Department.

2. Eventually, Shri Kurdeshwar wrote a D.O.

letter to Shri Chaudhari dated 10-2-1951, in which he stated that he had already communicated his written consent to the removal of his lien with retrospective effects etc. Office, therefore, put up a notification terminating his lien on his permanent post of Assistant Secretary, L.D. The notification was issued by the P.&S.D. on 26-2-1951. The decision of Government was communicated to Shri Murdeshwar in this Department letter No.3390 dated 24th February 1951, and a copy of the same was forwarded to the Government of India, Ministry of Law, for information.

On 3rd March 1951, however, the Establishment officer to the Government of India, Ministry of Home Affairs, addressed a D.O. letter to the Chief Secretary to the Government of Bombay (Shri Bhat) requesting that as he was examining the question of terminating the lien of Shri Murdeshwar, the Bombay Government should suspend taking action in the matter until a further communication was received from him. A copy of the said D.O. letter was also addressed to the Secretary to the Government of Bombay, Legal Department. In view of this, self-contained note stating the facts was sent to the political and Services Department (vide U.O. to P.&S.D. No.3913 dated 8-3-1951) In his D.O. letter No.6/1- Appts. dated 22-3-1951, the Chief Secretary informed Shri Kapat, the Establishment Officer to the Government of India, Ministry of Home Affairs, that "so far as the question of the termination of Shri Murdeshwar's lien on the ponst of Assistant Secretary in the Legal Department is concerned, action has already been taken and Shri Murdeshwar's line on the post has

M.R.D.
30-7-52

been terminated after getting his written consent for the same, the necessary notification the matter has hx also been published in the Government Gazette." No further communication on this question appears to have been addressed to the Cheif Secretary by the Establishment Officer, Government of India, Ministry of Home Affairs till December 1952.

4. It appears that as a result of Shri Nurdeshwar's appointment as permanent Deputy Secretary in the Ministry of Law, the question of terminating his lien on the post of Civil Judge(Jr.Division) in the Bombay Judicial Service, was also being agaitated in the Home Department and Secretary, Home Department, addressed a letter to Shri Nurdeshwar on 29-12-1950 requesting him to send his written consent to the termination of his lien on the post of Civil Judge. In his D.O. letter No.F.14(1)-E.O./51dated 10-3-1951, addressed to the Cheisf Secretary, the Establishment Officer to the Government of India, requested that action on Shri Dehejia's letter be suspended until further communication. After several reminders issued by the H.D. for the reasons stated in his D.O. letter dated 22-12-1952 addressed to the Chief Secretary, the Establishment Officer, Government of India, requests that the whole case be examined in accordance with the appropriate rules and procedure, and that pending final disposal, the decision contained in the L.D. letter of the 21th February 1951 may be kept in abeyance. The Home Department states that as the question involved is one of revival of Shri Nurdeshwar's lien on the post of Assistant Secretary,Legal

the post of Assistant Secretary, Legal Department the matter is for L.D. to consider in consultation with the P.&.S.D.

5. The circumstances which led to the termination of Shri Murdeshwar's lien on the post of A.S.,L.D. have been explained in the above paragraphs. A copy of the L.D. letter No.3390 dated 24-2-1951 informing Shri Murdeshwar about termination of his lien on the post of A.S.,L.D. was also forwarded to the Ministry of law. Government of India. Subsequently, in reply to the D.O.letter dated 3.3.51 from the Establishment Officer, the Chief Secretary in his D.O. letter of 22-3-1951 informed the E.O. that action had already been taken and Shri Murdeshwar's lien on that post had been terminated after obtaining his consent in writing and that the necessary notification was also published in the Bombay Government Gazette. It is strange that after a lapse of a year and nine months, the Establishment Officer should again request the Chief Secretary to re-examine the case and to keep in abeyance the decision contained in L.D. letter dated 24-2-1951, in respect of the same matter on which decision has been taken and acted upon.

The post of Assistant Secretary in the Legal Department held by Shri Murdeshwar was a tenure post. He, therefore, had no lien on a permanent post as presumed by the Establishment officer to the Government of India, Ministry of Home Affairs. Shri Murdeshwar's lien on the tenure post was terminated in accordance with rule 20A(b)of the B.C.S.R. and there was no irregularty in the procedure followed.When Shri Murdeshwar communicated his consent in writing to termination of His lien on the post of Assistant Secretary in Legal Department, it was presumed that he did so with the knowledge of the Government of India. Apart from the fact that it is too late now to

reconsider ..

reconsider the matter, there is no post of Assistant Secretary in Legal Department which is vacantin which Shri Murdeshwar's lien can be revived. It may be stated in this connection that according to Government orders passed in 1910(G.R.L.D.No.398-A.S. 304-1910) that Civil Judges appointed to the post of the Assistant Secretary in the Legal Department were regarded as on deputation and therefore, they had no lien on a permanent post as presumed by the Establishment Officer to the Government of India. The P.&.S.D. may inform the Establishment Officer accordingly, on the lines of the D.O. letter sent herewith.

Sd/-
30-11
Additional Secretary to Government.

U.R. to P.&.S.D. No.24068/C,dated the 30th November 1953.

M.RD.
30-7-56
C.4

D.O.No.

Political and Service Department,
Bombay Castle, 1953.

My dear

Please refer to the correspondence, resting with Shri Bhatt'ar D.O. letter No.6/1-Appts. dated the 22nd March 1951 and your D.O. No.F. 14(1)-EO/51 dated the 22nd December 1952, regarding termination of lien of Shri Murdeshwar on the post of Assistant Secretary in the Legal Department.

The question of Shri Murdeshwar's lien on the post of Assistant Secretary in the Legal Department was fully examined by Shri Bhat and he apprised you of the position that Shri Murdeshwar's lien was terminated after getting his written consent for the same and that necessary notification was published in the Bombay Government Gazette. Shri Murdeshwar's lien was terminated after following the procedure laid down in rule 20A(b) of the B.C.S. Rs. and there was no irregularity in the procedure followed. When Shri Murdeshwar communicated his consent in writing, there was every justification for this Government to presume that he did so in consultation with and with the knowledge of the Government of India.

In paragraph 3 of your letter, it is remarked that "The Bombay Government's proposal to terminate his lien on the permanent post which he holds under them would deprive him of his service right, in the event of his reversion to the Bombay Covernment at the end of his present tenure, to be reposted to the permanent post on which he has a lien or to a post carrying at least equivalent status and emoluments." It may be

pointed out that according to the Governme... orders passed in 1910 Shri Murdeshwar was regarded as on deputation to the Legal Department. In short, the post of Assistant Secretary in Legal Department held by Shri Murdeshwar was a tenure post. That being the position, Shri Murdeshwar can have no claim on the post of the the Assistant Secretary in the Legal Department. It may also be stated that from the point of view of status and emoluments, the post of Assistant Secretary in L.D. is much below the post of Depty Secretary in the Ministry of Law. As Shri. Murdeshwar holds a suspended lien in the post of Civil Judge(Jr,Division). in case of his reversion he may be reposted to that permanent post(vide rule 20A(a)of B.C.S. Rs.) Since, as intimated to you by Shri Bhat, the notification terminating Shri Murdeshwar's lien on the post of Assistant Secretary in L.D. has already been issued and as this action was taken in compliance with rule20A(b) of the B.C.S.Rs., there appears no sufficient reason to reopen the question after a lapse of a year and nine months to revive his lien. Moreover there is no vacant post of Assistant Secretary, Legal Department on which lien of Shri Murdeshwar can be revived.

Yours

D.O.No.H.P.7827/4 II.
Political and Services Department,
Bombay Castle, 31st, December 1953.

My dear Bapat,

Please refer to the correspondence resting with Shri Bhatts demi-Official letter No.6/1-Appts. dated the 22nd March 1951 and your demi-official No.F14(1)-E O/51 dated the 22nd December 1952, regarding termination of lien of Shri Murdeshwar on the post of Assistant Secretary in the Legal Department.

The questions of Shri Murdeshwar's lien on the post of Assistant Secretary in the Legal Department was fully examined by Shri Bhat and he apprised you of the position that Shri Murdeshwar's lien was terminated after getting his written consent and necessary notification was published in the Bombay Government Gazette. Shri Murdeshwar's lien was terminated after following the procedure laid down in rule 20A(b) of the Bombay Civil Services Rules and there was no irregularity in the procedure followed. When Shri Murdeshwar communicated his consent in writing, there was every justification for this Government to presume that he did so in consultation with and with the knowledge of the Government of India.

In paragraph 3 of your letter, it remarked that "The Bombay Government's proposal to terminate his lien on the permanent post which he holds under them would deprive him of his service right, in the event of his reversion to the Bombay Government at the end of his present tenure, to be reposted to the permanent post on which he has a lien or to a post carrying at least equivalent status and emoluments". It may be pointed out that according to the Government orders passed in 1910 in regard to appointment of Civil Judges to the post of an Assistant Secretary Shri Murdeshwar was regarded as on deputation to the Legal Department. In short, the post of Assistant Secretary in Legal Department held by Shri Murdeshwar was a tenure post. That being the position, Shri Murdeshwar can have no claim on the post of the Assistant Secretary in the Legal Department. It may also be stated that from the point of view of statues and emoluments, the post of Assistant Secretary in Legal Department is much below the post of Deputy Secretary in the Ministry ofLaw. As Shri Murdeshwar holds a suspended lien in the post of Civil Judge(Jr.Division) in case of his reversion he may be reposted to that permanent post (vide rule20A(a)of Bombay Civil services

P.T.O.

Rules). Since as intimated to you by Shri Phat, the notification terminating Shri Murdeshwar's lien on the post of Assistant Secretary in Legal Department has already been issued and as this action was taken in compliance with rule 20A(b) of the Bombay Civil Services Rules, there is now no reason to reopen the question after a lapse of a year and nine months to revive his lien. Moreover, there is no vacant post of Assistant Secretary, Legal Department on which the lien of Shri Murdeshwar can be revived.

Yours sincerely,

(M.D. Bhansali)

Shri S.B.Bapat I.C.S.,
Establishment Officer to the
Government of India,
Ministry of Home Affairs,
NEW DELHI.

No.7827/4-II,
Political and Services Department,
Bombay Castle, 31st, December 1953.

Copy forwarded for information to:-
The Home Department
The Legal Department
The Registrar High Court Appellate Side, Bombay.

By order and the name of the Governor of Bombay,

Sd/-
Assistant Secretary to the Government of Bombay,
Political and Services Department.

M.R.D.
1-8-56
C.4

..O.693/33/60923-VIII. Finance Department,
Secretariat Annexe,

Fort, Bombay, 18th December 1953.

Dear Adavi,

Kindly refer to your D.O. No.G.I. ICS/2363 dated 1st August 1953. Re employment of Shri M.R.Meherm, with the Government of Bombay is governed by the terms of his Agreement printed as an accompaniment to the Government Resolution Revenue Department No.437/49 dated 5th February 1949. Copy of this Agreement has been forwarded to the Government of India. It is true, that under the terms of his Agreement, Shri Meher cannot claim pay in a post under this Government at a rate, higher than what would normally have been admissible to him in the Senior time-Scale of the I.C.S., minus his pension. Government has however, held that the Agreement does not preclude it from giving Shri Meher, special pay when it considers such a course necessary. Please see in this connection D.O. No.437/49-E, dated 27th April 1949 from Shri V.N. Sardesai, I.C.S., Secretary, Revenue Department(copy enclosed for ready reference.) I may state, that clause 4 of the Agreement has been inserted in order to safeguard the interests of Government in as much as Shri Meher, should not claim appointment to higher posts outside the Senior time-Scale of the I.C.S., as a matter of right by virtue of his original rank in the I.C.S., Gradation list. It is in consideration of the above circumstances that Shri Meher is granted higher pay when he holds a post above the time-scale of the I.C.S. For your information, I may state that the pay of Shri Meher, in the post of Secretary to Government, Local Self Government and Public Health Department was fixed(at Rs2,550/-minus pension) in consultation with the Government of India and he was allowed the same pay while holding the posts of additional Secretary and Secretary to Government, Legal Department.

2...

P.T.O

2. The position explained above also applies inease of Shri B.P. Dalal, I.C.S.(Retired).

3. A copy of D.O. letter No.437/49-E dated 27th April 1949 from the Secretary, Revenue Department, Shri V.N. Sardesai,I.C.S., is being forwarded to you by the Revenue Department through this Department Separately.

4. With regard to the pay to be fixed for the post of Additional Secretary to Government, Legal Department, I am to state that in view of the uncertainty of the future status of that post, Government does not consider it necessary at this stage to fix a permanent pay for the same.

Yours Sincerely,

(.V.T. DEHEJIA).

Accompaniment:Copy of D.O. Revenue Department No.437/49-E dated 27th April 1949.

Shri V.N.ADAVI, I.A. &A.S.,
Accountant General,
Bombay ,
Copy to :

Political and Services Department,
Legal Department,
Revenue Department.

M.R.B
1-8-49
C.S

Secretary to the Government of Bombay,
Finance Department.